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Attorney for Defendant and Counter-claimants
DAVID MOSTNY and EURO WRAP, LTD.,
a California Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WINNIE PAPIR, A/S, a Danish Corporation

Plaintiff,

v.

DAVID MOSTNY, an individual, and DOES
1 through 10, inclusive,

Defendants.

DAVID MOSTNY, individually and
doing business as EUROWRAP, LTD.

Counter-claimant,

v.

WINNIE PAPIR, A/S
and ROES 1 through 10, inclusive

Counter-defendants.

Case No. C 05-01194 MJJ

**DEFENDANT AND COUNTER-
CLAIMANTS' CASE
MANAGEMENT STATEMENT
AND F.R.C.P. 16 REPORT**

**~~PROPOSED~~ CASE
MANAGEMENT ORDER**

Date: October 4, 2005

Time: 2:00 p.m.

Ctrm: 11

Judge: Hon. Martin J. Jenkins

Pursuant to Northern District Local Rule 16-9 and this Court's Supplemental Order
Setting Initial Case Management Conference in Civil Cases before Judge Martin Jenkins, David
Mostny and Euro Wrap, Ltd. respectfully submit this Case Management Conference Statement

and F.R.C.P. 16 report. The hardship which requires Defendant/ Counter-Claimants to file this report with the Court was the time constraint to meet-and-confer with Plaintiff's counsel and Plaintiff's counsel's refusal to stipulate to continue the October 4, 2005 Case Management Conference, although counsel now writes in its Proposed Case Management Conference Statement that the matter should be continued until late November– early December 2005. Consequently, for ease and due to time constraints, this Case Management Conference Statement is submitted by Defendant/ Counter-Claimants.

1. CASE STATUS

Prior to the June 23, 2005 initial Case Management Conference, on June 20, 2005, the Honorable William Alsup, District Court Judge, issued his Order Staying Action. On July 19, 2005, the case was reassigned to this Court. A copy of the Order Staying Action is attached as **Exhibit A**. As explained in the Order, the case pending in this Court is one of three actions between the parties. The first case was Northern District of California, Case No. C 03-0509 MEJ. After dismissal of that action, the matter was appealed, USCA Docket No. 04-15119. In addition, USCA Docket No. 04-16287, is an appeal from an award of attorneys' fees and costs by the District Court based on the Order granting the Defendant's Motion to Dismiss. The second case between the parties is Danish Maritime and Commercial Court, Case No. H-0046-03. The third case is this lawsuit before this Court.

The second case between the parties proceeded to trial August 30, 2005 in Copenhagen, Denmark. At the conclusion of the trial on September 2, 2005, the Court announced that it would issue its Order on October 13, 2005. As this Court can glean from reading the Order Staying Action, a number of the claims between the parties may be resolved by the Maritime and Commercial Court's Judgment. Therefore, it makes little sense to hold a Case Management Conference on October 4, 2005, as the parties will not know their position until the Maritime and Commercial Court's Judgment is filed and translated into English. By this Case Management Conference Statement and in accord with the letter previously sent to the Court, it is requested that the October 4, 2005 Case Management Conference be vacated and

1 continued until a date 30-60 days from the time of the anticipated Maritime and Commercial
2 Court's Judgment, October 13, 2005

3 2. **FEDERAL RULES OF CIVIL PROCEDURE 26(F) COMPLIANCE.**

4 Due to the Order Staying Action the parties have not served complete Initial Disclosures
5 pursuant to F.R.C.P. 26(a). Although it should be brought to the attention of this Court, almost
6 every document between the parties was previously exchanged in either the first action (in the
7 District Court) and many were introduced into evidence in the trial before the Maritime and
8 Commercial Court.

9 3. **DISCOVERY PLAN AND PROPOSED DISCOVERY DEADLINES**

10 Due to the Order Staying Action, the parties have not entered into a discovery plan and
11 all dates previously provided set forth in the Initial Case Management Conference Statement
12 (June 23, 2005) could not be complied with and must be vacated and rescheduled once the
13 parties determine whether this third action will proceed.

14 4. **ADR COMPLIANCE.**

15 On September 22, 2005, at 9:30 a.m., the parties participated in an ADR Phone
16 Conference with Robin W. Siefkin of the United States District Court. Based upon the current
17 stay of the action, the parties scheduled a further ADR Phone Conference on December 7, 2005
18 at 9:30 a.m.

19 5. **LOCAL RULE 16-10 COMPLIANCE.**

20 Defendant/Counter-Claimants contend that based upon the Order Staying Action and
21 until the Judgment of the Maritime and Commercial Court, it is neither practical nor possible to
22 fully comply with 16-10. It is suggested that compliance be made at the next Case Management
23 Conference when the parties will better know their positions.

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SERVICE LISTS

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Dated: September 26, 2005

FOREMAN & BRASSO

By: /s/
Ronald D. Foreman
Attorney for Defendant
and Counter-claimant

**DEFENDANT AND COUNTER-CLAIMANTS'
CASE MANAGEMENT STATEMENT**

Case No. C 05-1194 WHA

CASE MANAGEMENT ORDER

The Case Management Conference set for October 4, 2005 is vacated. A Case Management Conference is hereby set for 12/6/2005 at 2 pm to examine the status and to decide the next step.

Dated: 9/27/2005


HONORABLE MARTIN J. JENKINS
United States District Court Judge